

Original

OPEN MEETING AGENDA ITEM



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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION
OF ARIZONA WATER COMPANY, AN
ARIZONA CORPORATION, TO EXTEND
ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY AT
CASA GRANDE, PINAL COUNTY,
ARIZONA

DOCKET NO. W-01445A-06-0059

EXCEPTIONS TO ADMINISTRATIVE
LAW JUDGE'S RECOMMENDATION

Arizona Water Company (the "Company"), the applicant in this docket, files its exceptions to the October 3, 2006 Recommendation (the "Recommendation") of Administrative Law Judge Yvette Kinsey. Specifically, the Company is concerned with Finding of Fact No. 33, at page 10, and the sixth ordering paragraph, which appears on page 13, beginning at line 26. The sixth Ordering paragraph provides as follows:

IT IS FURTHER ORDERED that in light of the on-going drought conditions in Central Arizona and the need to conserve groundwater, Arizona Water Company is prohibited from selling groundwater for the purpose of irrigating any future golf courses within the certificated expansion area or any ornamental lakes or water features located in the common areas of the proposed new developments within the certificated expansion area.

1 The Arizona Department of Water Resources ("ADWR"), through its Third
2 Management Plan (the "TMP") has already promulgated, as state law requires, a
3 comprehensive conservation program for the Pinal Active Management Area ("AMA"), in
4 which the certificated expansion area is located.

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6 The condition in the sixth ordering paragraph does not consider allowances of
7 groundwater for new subdivisions on land with an irrigation grandfathered water right
8 where such right is being extinguished for the sole purpose of providing water supplies
9 for development. Through a lengthy assured water supply rulemaking process, ADWR
10 has adopted and approved enforceable assured water supply rules that govern the use
11 of water for new development in the Pinal AMA. These assured water supply rules
12 provide that uses of groundwater, even for turf facilities, ornamental water features and
13 other water intensive uses are consistent with the Pinal AMA management goal and
14 management plan. Prior to issuing a certificate of assured water supply or approving a
15 designation of assured water supply, ADWR reviews the proposed uses within each
16 subdivision or service area, as set forth in the application, to determine if such uses are
17 consistent with the management plan and management goal. If such use is inconsistent
18 with such rules, ADWR has a duty to disapprove the application. Finally, enrollment in
19 the Central Arizona Groundwater Replenishment District provides renewable supplies of
20 water to be put to beneficial use within the Pinal AMA by replenishing the areas'
21 groundwater basins for all water use in Pinal AMA subdivisions above established
22 allotments, which includes Central Arizona Project ("CAP") water and effluent. The sixth
23 ordering paragraph of the Recommendation would conflict with these ADWR
24 requirements.
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1 **BACKGROUND**

2 The Arizona Groundwater Code (the "Code"), A.R.S. 45-401, et seq., was
3 enacted by the Legislature to protect the state's economy and welfare, and to "provide a
4 framework for the comprehensive management and regulation of the withdrawal,
5 transportation, use, conservation and conveyance of rights to use the groundwater in
6 this state." A.R.S. 45-401(B). Responsibility for these critical matters was placed in the
7 hands of ADWR, (A.R.S. 45-102 (A)), headed by a Director, (A.R.S. 45-102 (B)), with
8 sweeping "general control and supervision" of groundwater (A.R.S. 45-103 (B)).
9

10
11 The Director has carried out this responsibility for groundwater conservation by
12 enacting a series of management plans (five are required by the Code for each AMA,
13 one for each decade beginning in 1980, A.R.S. 45-563 (A)). The Director most recently
14 adopted the Third Management Plan ("TMP"), which, by law, had to require, for
15 municipal providers.¹ "additional reasonable reductions in per capita use to those
16 required in the second management period and use of such other conservation
17 measures as may be appropriate for individual users." A.R.S. 45-566 (2) The TMP
18 allows landowners and residents to use groundwater delivered to them, "subject
19 to...(c)onservation requirements developed by the director pursuant to article 9 of this
20 chapter." A.R.S. 45-561-578.
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23 Under the TMP, certain end users, including turf related facilities (parks, golf
24 courses, and common areas of housing developments) are subject to direct regulation
25 by the Director. Chapter 6 of the TMP, the Industrial Conservation Program, provides
26 for an annual water allotment for turf related facilities such as golf courses. A municipal
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28 ¹ The Company is a municipal provider under the Code. A.R.S. 45-561 (10).

1 provider, such as the Company, is not prohibited from selling groundwater to the facility
2 but cannot sell more water to the facility than the Chapter 6 annual allotment.
3

4 Finally, A.R.S. 45-131-140.01 provides for a comprehensive regulatory scheme
5 for a "Body of Water", which includes a lake with a surface area greater than twelve
6 thousand three hundred twenty square feet that is filled or refilled for landscape, scenic
7 or recreational purposes. 45-131 (1).
8

9
10 Pertinent portions of the TMP are attached to these Exceptions as Attachment A.
11

12 DISCUSSION

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14 As detailed above, the Legislature established a comprehensive, thorough, and
15 complex statutory and regulatory scheme to address groundwater conservation, and
16 placed the authority for administration in ADWR, and, specifically, the Director. The
17 Company agrees that water conservation is an important public policy goal, and the
18 Company is in compliance with all TMP requirements in this regard. The Company's
19 President, William M. Garfield is a founding member of the newly formed Pinal County
20 Local Drought Impact Group, a result of Governor Napolitano's Drought Task Force.
21 This group was formed to monitor drought conditions, provide outreach and education
22 and to plan for mitigation and response for the impacts of drought. In addition, the
23 Company has been a key stakeholder with ADWR in developing effective conservation
24 measures included within the TMP, which will result in adoption of more efficient best
25 management practices in the Pinal AMA and other AMAs. Mr. Garfield is also a
26 member of a committee of private and public municipal providers that is working with
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1 ADWR Staff to develop a new, and more effective conservation program for municipal
2 providers. It is expected that legislation will be introduced in the 2007 legislative session
3 to implement of this new program.
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5 The Company submits, however, that the sixth ordering paragraph could result in
6 conflicting regulations. For example, if a golf course has a water allotment under
7 Chapter 6 of the Management Plan, and the Company is barred from selling
8 groundwater to the golf course, the golf course might have legal recourse to prevent the
9 Commission from interfering with the delivery of its established water allotment under
10 the TMP. Without separate pumping authorities of their own, developers justifiably rely
11 on municipal providers, like the Company, to deliver water to meet their water needs
12 and the sixth ordering paragraph would prohibit the Company from meeting those
13 needs, leaving developers with no supplies of water to serve legitimate water uses
14 already authorized by ADWR under its assured water supply rules. The Commission
15 should make sure that its orders are in harmony with the TMP and the water
16 management goals ADWR established for the Pinal AMA. This is especially important
17 within the Pinal AMA, where the management goal is uniquely different from the safe
18 yield goal of the other AMAs and where reliance on groundwater to serve new uses is
19 expressly provided by statute.
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23 There is also a permitting procedure (as well as provisions for cease and desist
24 orders, and civil penalties for violations) established under A.R.S. 45-133, 134 for a
25 Body of Water, and, to the extent that the sixth ordering paragraph may conflict with the
26 regulatory scheme intended by the Legislature, similar legal recourse may lie.
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1 Under the Code, the Legislature clearly intended that ADWR should establish
2 and enforce groundwater management and conservation programs for municipal
3 providers such as the Company. Furthermore, ADWR has carried out that intention by
4 developing and implementing the management plans, and corresponding regulations,
5 e.g., the Assured Water Supply Program.
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8 **CONCLUSION**

9 For the foregoing reasons, the Company respectfully submits that the
10 Recommendation should be amended to delete Finding of Fact No. 33 and the sixth
11 ordering paragraph.
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13 In the alternative, the Recommendation can be harmonized with ADWR's TMP
14 and groundwater management goals and regulations by adding the following wording at
15 the end of Finding of Fact No. 33 and the sixth ordering paragraph:

16 "... except where such sales are made in accordance with the groundwater
17 management goals and management plans established by the Arizona Department of
18 Water Resources."
19

20 RESPECTFULLY SUBMITTED this 12th day of October 2006.

21 ARIZONA WATER COMPANY

22
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1 Original and thirteen (13) copies of the foregoing filed the 12th day of October 2006
2 with:

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7 A copy of the foregoing was hand-delivered this 12th day of October 2006 to:

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12 A copy of the foregoing was mailed this 12th day of October 2006 to:

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